IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII, Rule 32(2)(b)

Description of the Case.

A.O. No. 966 of 2001
(Old No.106/1984)
Smt. Leela Devi

Vs
Pradhuman Singh & others

Approved for reporting.

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Not approved for reporting

Date of decision :- 24.8.2004

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O.No.966 of 2001
(Old No. 106/1984)

Smt. Leela Devi ..... Appellant

Versus

Praduman Singh & others ... Respondents

Dated: 24.8.2004

Hon. Rajesh Tandon, J.

This is an appeal against the judgment and award dated 22.10.1983 passed by the Motor Accident Claims Tribunal, Pithoragarh.

Briefly stated the facts giving rise to the present appeal are that the appellants filed a petition under section 166A of Motor Vehicle Act for grant of compensation on account of death of Sri Shiv Singh, in a motor vehicle accident.

The petitioner has stated that on 25.4.1981 the deceased boarded truck No. USQ 4262 for going to Pithoragarh. At about 1.00 P.M. when the truck reached in between Ghat and Barakot it met with accident and fell down in to a khadd due to which deceased sustained fatal injuries and he succumbed to the injuries sustained. The petitioner has alleged that the accident

took place due to the rash and negligent driving by the driver of the truck. At the time of accident the deceased was aged 18 years and he was doing service. The deceased was earning Rs.300/- per month by salary.

Respondents have contested the Claim petition and have filed written statement. The owner of the truck Sri Praduman Singh had denied that the accident took place due to rash and negligent driving of the truck. He has stated that the accident occurred due to failure of brake of the truck. The owner of the truck also denied that the deceased was travelling by the truck in question. He has stated that the deceased was standing by the side of the road and the ill-fated truck hit him at the time of accident due to which he sustained injuries.

The insurance company opposite party no.2 has mentioned in its written statement that the vehicle was a goods carrier and passengers were not permitted to travel by it. The driver and owner of the truck violated the terms and conditions of the insurance policy and as such the insurance company is not liable to pay compensation to the claimants.

On the pleadings of the parties the following issues were framed by the learned Tribunal:

1. Whether the accident in which the deceased was killed took place due to rash and negligent driving of the truck or due to failure of brakes as alleged in para 27 of the written statement of the opposite party no.I?
2. What was the age and monthly income of the deceased at the time of his death?
3. What was the monthly contribution of the deceased towards the maintenance of the claimants?

4. To what compensation, if any, are the claimants entitled and from which of the opposite parties?
5. Whether the deceased was travelling in this truck at the time of accident or was a pedestrian?
6. Whether the driver of the truck was not having a valid driving licence? If so, its effect?

The learned Tribunal has decided issue no.1 against the claimant appellant and held that the accident took place due to failure of brake and steering, which was beyond the control of the driver. In reply of issues no. 2 and 3 the claims Tribunal has held that the deceased was not contributing towards the maintenance of the claimants. In reply of issue no.4 the Claims Tribunal has held that the deceased was travelling by the truck at the time of accident and was not a pedestrian. In reply of issue no. 6 the Claims Tribunal has held that the driver was having valid driving licence. The Claims Tribunal on the basis of findings on issue no.1, dismissed the claim petition.

I have heard the learned counsel for the parties and have perused the entire evidence on record.

The main contention of the appellant is that the findings of Claims Tribunal regarding issue no.1 are not based on the evidence on record. The Claims Tribunal has based his findings on surmises and conjunctures. The petitioner has proved by cogent evidence that the accident has taken place due to rash and negligent driving of the truck driver and as such the petitioner is entitled to get compensation as claimed by her.

To prove the issue of rash and negligent driving by the driver of the truck, the petitioner has filed copy of statement of Sri Ganesh Chand paper no. 86-C given in M.A.C. No. 48 of 1981, Keshavi Pant vs. Praduman Singh & others. This witness

has stated on oath that on the day of accident he was going to village Patangaon on foot. He saw that the truck was being driven with a high speed and the truck dashed with parapet and fell down into the khadd.

The petitioner also examined Smt. Leela Devi mother of the deceased but she is not eye witness of the accident. The best witness to depose about the cause of accident was the truck driver Bahadur Singh, who is still alive but the opposite parties have not produced him in the witness box to depose the actual cause of accident. The opposite parties have alleged that the accident had taken place due to failure of brake and steering of the truck and as such the burden of proof was on the opposite parties but they failed to adduce any evidence in support of their assertion.

The Apex Court in the case syad Akbar vs. State of Karnataka, AIR 1979 SC 1848 has held as under:

"It is to such cases that the maxim res ipsa liquitur may apply, if the cause of accident is unknown and no reasonable explanation as to the cause is coming forth from the defendant. To emphasise the point, it may be reiterated that in such cases, the event or accident must be of a kind which does not happen in the ordinary course of things if those who have the management and control use due care. But , according to some decisions, satisfaction of this condition alone is not sufficient for res ipsa to come into play and it has to be further satisfied that the event which caused the accident was within the defendant's control. The reason for the second requirement is that where the defendant has control of the thing, which caused the injury, he is in a better position than

the plaintiff to explain how the accident occurred. *

* * * *

Thus for the application of the maxim res ipsa loquitur no less important a requirement is that the res must not only bespeak negligence, but pin it on the defendant."

In view of above proposition of law, I am of the opinion that the Claims Tribunal was not justified to hold that the cause of accident was not the rash and negligent driving by the driver of the truck. I firmly hold that the accident had taken place due to rash and negligent driving by the truck driver causing the death of deceased.

On behalf of insurance company it has been argued that the truck was not meant for carrying on passengers and it is a goods vehicle. It has also been argued that the driver of the truck has flouted the terms and conditions of the insurance policy. Apex Court in the case of United India Insurance Co. Ltd; vs. Lehru and others, 2003 (3) SCC 338, the insurance company cannot absolve its liability towards third party. The Apex Court has held as under:

"Now let us consider section 149 (2). Reliance has been placed on Section 149 (2)(a)(ii). As seen in order to avoid liability under this provisions it must be shown that there is a breach. As held in Skandia's and Sohan Lal Passi's cases (supra) the breach must be on part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen while it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had licence. Can the Insurance Company disown liability ? The answer has to be an emphatic "no". To hold otherwise would be to negate

the very purpose of the compulsory insurance. The injured or relatives of person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that the Legislature, in its wisdom, has made insurance at least third party insurance compulsory. The aim and purpose being that an insurance company would be available to pay. The business of the Company is to insurance. In all businesses there is an element of risk. All persons carrying on business must taken risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer or loss. Those provisions meet these requirements. We are thus in agreement with what is laid down in aforementioned cases viz. that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The Insurance Company must establish that the breach was on the part of the insured."

In view of the above proposition of law it is crystal clear that the insurance company cannot avoid its liability to pay compensation to the third party. However, as held in (2004) 2 SCC 1, National Insurance co. Ltd. vs. Baljit Kaur and others the insurance company can recover the same from the owner of the vehicle. In the above-cited case the Apex Court has held as under:

"The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however,

would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decision of this Court in Satpal Singh (2000) 1 SCC 237, the said decision has been overruled only in Asha Rani (2003 2 SCC 223. We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of section 168 of the Motor Vehicles Act, 1988, in terms whereof, it is not only entitled to determine the amount of the claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding."

So far as the amount of compensation is concerned the deceased was 18 years of age at the time of accident and he was working at Rudrapur and was earning Rs.300/- per month as salary. The respondents have denied that the deceased was

earning anything. The deceased was a young person and even by doing labour work he would have been earned a good wage. Thus in view of these circumstance monthly income of the deceased may be assumed as Rs.250/-. Thus the annual income of the deceased comes to Rs.3,000/- and after deducting one third for the self expenses of the deceased if he would have been alive the total dependency of the claimant comes to Rs.2,000/- per annum. The deceased at the time of accident, was aged 18 years and thus by applying a multiplier of 17 the amount of compensation comes to Rs.34,000/-.

The petitioner is also entitled to get expenses incurred in the last rites of the deceased and for loss of love and affection. For all these counts a sum of Rs.16,000/- will be just and proper compensation.

Thus the petitioner is entitled to get a total compensation of Rs. 50,000/- together with pendente lite and future interest @ 9% per annum. The National Insurance Co. Ltd. shall pay the amount of compensation and interest to the claimant. However, the insurance company shall be at liberty to recover the amount from the owner of the vehicle on fling an application towards the execution side before the Claims Tribunal concerned.

Consequently, the appeal is allowed. There will be no order as to costs.

(Rajesh Tandon J.)

24.8.2004
*Dhyani